

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-31
HOUSE BILL 21

AN ACT TO CLARIFY THE ADMINISTRATION OF NONPARTISAN MUNICIPAL
ELECTIONS BY COUNTY BOARDS OF ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-280 is repealed.

SECTION 2. G.S. 163-280.1 is repealed.

SECTION 3. G.S. 163-281 is repealed.

SECTION 4. G.S. 163-284 reads as rewritten:

"§ 163-284. Mandatory administration by county boards of elections.

(a) ~~No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.~~

(b) The registration of voters and the conduct of all elections in municipalities and special districts ~~covered under this section~~ shall be under the authority of the county board of elections. Any contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under ~~(a) and (b) of this section.~~"

SECTION 5. G.S. 163-285 is repealed.

SECTION 6. G.S. 163-286(b) is repealed.

SECTION 7. G.S. 163-287 reads as rewritten:

"§ 163-287. Special elections; procedure for calling.

Any city, ~~whether its elections are conducted by the county board of elections or the municipal board of elections,~~ municipality or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution



and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The ~~appropriate~~ board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections."

SECTION 8. G.S. 163-288 reads as rewritten:

"§ 163-288. Registration for city elections; county and municipal boards of elections.

~~Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the~~The registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national."

SECTION 9. G.S. 163-288.1(a) reads as rewritten:

"(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county ~~or municipal~~ board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law."

SECTION 10. G.S. 163-289(c) is repealed.

SECTION 11. G.S. 115C-507 reads as rewritten:

"§ 115C-507. Rules governing elections.

All elections under this Chapter shall be held and conducted by the appropriate county ~~or municipal~~ board of elections.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

The notice of the election shall be given as provided in G.S. 163-33(8) and in addition include a legal description of the area within which the election is to be held, and, if any additional tax is proposed to be levied, the maximum rate of tax to be levied which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

No new registration of voters is required, but the board of elections, in its discretion, may use either Method A or Method B set forth in G.S. 163-288.2 in activating the voters in the territory.

The ballot in such election shall contain the words "FOR local tax and AGAINST local tax" except when the election is held under subsection (c) of G.S. 115C-501, in which case the ballots shall contain the words "FOR enlargement of the _____ City Administrative Unit and school tax of the same rate," and "AGAINST enlargement of the _____ City Administrative Unit and school tax of the same rate."

The elections shall be held in accordance with the applicable provisions of Chapter 163 and the expense of the election shall be paid by the board of education of the administrative unit in which the election is held, provided that when territory is proposed to be added to a city administrative unit, that unit shall bear the expense.

No election held under this Article shall be open to question except in an action or proceeding commenced within 30 days after the board of elections has certified the results."

SECTION 12. G.S. 120-30.9F reads as rewritten:

"§ 120-30.9F. Municipalities; municipal attorney.

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

- (1) Of the time they become laws, any local acts of the General Assembly; and
- (2) Of adoption actions of the municipal governing body or ~~municipal~~ board of elections or any other municipal agency which constitutes a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition."

SECTION 13. G.S. 128-1.1(d) reads as rewritten:

"(d) The term "elective office," as used herein, shall mean any office filled by election by the people when the election is conducted by a county or ~~municipal~~ board of elections under the supervision of the State Board of Elections."

SECTION 14. G.S. 162A-35 reads as rewritten:

"§ 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.

If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifteen per centum (15%) of the voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the Department of Environment and Natural Resources hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The Secretary of Environment and Natural Resources and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in

a newspaper circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the Department of Environment and Natural Resources.

If, after such hearing, the Commission for Public Health and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the Commission for Public Health shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unincorporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than fifteen percent (15%) of the registered voters of the district requesting an election to be held on the question of including the political subdivision or unincorporated area in the district, the district board shall certify the petition and if found adequate, shall request the county board of elections to hold the election in the district. The election in the district may be held at the same time as the election in the political subdivision or unincorporated area seeking to become a part of the district.

The county board of elections shall give notice of the elections as required in G.S. 163-33(8) and shall conduct the ~~election in the unincorporated area and within the political subdivision unless there is a municipal board of elections which conducts the elections for the municipality election.~~

The cost of the election in the district shall be paid by the district board and the cost of the municipal election by the municipality. The county shall pay the cost of an election in the unincorporated area. The governing body of the political subdivision shall file an accurate description of its boundaries, and those persons signing the petition for an unincorporated area shall file an accurate description of its boundaries with the board of elections at the time the petition is filed with the district board.

The elections shall be held and conducted in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The ballot shall contain the words:

"FOR inclusion in the ____ Metropolitan Water District of ____ County that area known as ____."

"AGAINST inclusion in the ____ Metropolitan Water District of ____ County that area known as ____."

If a majority of the votes cast in a political subdivision or unincorporated areas proposed to be included are in favor of inclusion, and a majority of the votes cast in the district favor inclusion, then from and after the date of the certification of the results such area or areas shall be a part of the district and subject to the debts of the district.

The results of the elections shall be certified to the district board.

If no election is required to be held in the district, then a favorable vote for inclusion in the political subdivision or unincorporated area shall be deemed to include such area or political subdivision as a part of the district and they shall be subject to the debts of the district.

No right of action or defense founded upon the invalidity of any such election shall be asserted, or open to question in any court upon any grounds unless the action or proceeding is commenced within 30 days after the results have been certified by the board of elections."

SECTION 15. G.S. 163-22 reads as rewritten:

"§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county ~~and municipal~~ boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them ~~and municipal elections board members~~ as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county ~~and municipal~~ boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county ~~and municipal~~ boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county ~~or municipal~~ board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county ~~or municipal~~ board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county ~~or municipal~~ board member affected and give ~~him~~ that member an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. ~~When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.~~

...

(f) The State Board of Elections shall prepare, print, distribute to the county ~~and municipal~~ boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

...."

SECTION 16. G.S. 163-25 reads as rewritten:

"§ 163-25. Authority of State Board to assist in litigation.

The State Board of Elections shall possess authority to assist any county ~~or municipal~~ board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county ~~or municipal~~ board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform

administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in ~~his~~ the Attorney General's discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor."

SECTION 17. G.S. 163-38 reads as rewritten:

"§ 163-38. Applicability of Article.

This Article applies to members and employees of the State Board of Elections and of each county ~~and municipal~~ board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board."

SECTION 18. G.S. 163-40 reads as rewritten:

"§ 163-40. Violation may be ground for removal.

A violation of this Article may be a ground to remove a State Board of Elections member under ~~G.S. 143B-16, 143B-16~~ or a county board of elections member under ~~G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i).~~ G.S. 163-22(c). A violation of this Article may be a ground for dismissal of an employee of the State Board of Elections or of a county board of elections. No criminal penalty shall be imposed for a violation of this Article."

SECTION 19. G.S. 163-42 reads as rewritten:

"§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

(a) Each county ~~and municipal~~ board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

(b) The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

(c) In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

(d) Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

SECTION 20. G.S. 163-278.6(1) reads as rewritten:

"(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county ~~or municipal~~ board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county ~~or municipal~~ board of elections conducting all local referenda."

SECTION 21. G.S. 163-298 reads as rewritten:

"§ 163-298. Municipal primaries and elections.

The phrases "county board of elections," and "chairman of the board of elections" as used in this Article, with respect to all municipal primaries and elections, shall mean the ~~municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those all cities and towns whose elections are conducted by the county board of elections.~~ municipalities. The words "general election," as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries."

SECTION 22. G.S. 163-299(g) reads as rewritten:

"(g) The county ~~or municipal~~ board of elections shall, in addition to the requirements contained in G.S. 163-182.5 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office."

SECTION 23. G.S. 163-300 reads as rewritten:

"§ 163-300. Disposition of duplicate abstracts in municipal elections.

Within nine days after a primary or election is held in any municipality, the chairman of the county ~~or municipal~~ board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-182.6. One copy shall be retained by the county ~~or municipal~~ board of elections as a permanent record and one copy shall be filed with the city clerk."

SECTION 24. G.S. 163-301 reads as rewritten:

"§ 163-301. Chairman of election board to furnish certificate of elections.

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-182.5, the chairman of the county ~~or municipal~~ board of elections shall issue certificates of election, under the hand and seal of the chairman, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-182.14."

SECTION 25. G.S. 163-304 reads as rewritten:

"§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise; emergency and ongoing administration by county board.

(a) Authority and Duty of State Board. – The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, ~~municipal boards of elections,~~ their members and legal officers on the conduct and administration of their elections and registration procedure.

~~The municipal council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the municipal council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.~~

The county ~~and municipal~~ boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

~~(b) Emergency Administration if Municipal Board Is Not Appointed.—If a municipal council in a municipality that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Director by June 1 in the year in which the municipal election is to occur, the Executive Director shall notify the municipal council that, unless a municipal board of elections is appointed and the Executive Director notified of its appointment by June 15 of that year, the county board of elections shall be ordered to conduct that municipality's elections that year on an emergency basis. If the municipal council does not so appoint and so notify by June 15, the Executive Director shall order the county board of elections to conduct the municipality's elections that year on an emergency basis.~~

~~(c) Emergency Administration Due to Serious Violations.—If a municipal council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a municipal election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the municipal council and municipal board of elections shall be given an opportunity to be heard by the State Board.~~

~~(d) Permanent County Administration.—The State Board of Elections may designate the county board of elections as the permanent agency to conduct a municipality's elections if all the following conditions are met:~~

- (1) ~~In more than one election conducted by that municipality either (i) the municipality's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the municipality's administration of the election.~~
- (2) ~~The State Board finds that the interest of the residents of the municipality in fair and competent administration of elections requires that the municipality not conduct its own elections.~~
- (3) ~~The municipal council and municipal board of elections are given an opportunity to be heard before the State Board.~~
- (4) ~~The State Board by a vote of at least four of its members designates the county board of elections as the permanent agency to conduct that municipality's elections.~~

~~The municipal council may not elect to conduct its own elections under G.S. 163-285 if the State Board has designated the county board of elections under this subsection as the permanent agency to conduct the municipality's elections.~~

~~(e) Reimbursement. — If the county board of elections administers a municipality's elections pursuant to subsection (b), (c), or (d) of this section, the municipality shall reimburse the county board of elections in the manner set forth in G.S. 163-285."~~

SECTION 26. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of April, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 10:42 a.m. this 7th day of April, 2011